

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

KNOCKOUT HOLDINGS, LLC  
f/k/a OCTO PLATFORM EQUITY  
HOLDINGS, LLC,

Plaintiff,

V.

ARVINDER KAKAR,

Defendant.

Civil Action No. 1:23-cv-00944

**DEFENDANT’S NON-CONFIDENTIAL MEMORANDUM IN SUPPORT**  
**OF IT’S MOTION TO TEMPORARILY FILE UNDER SEAL**

Arvinder Kakar (“Kakar”), by counsel, and under Local Civil Rule 5(C), submits the following Memorandum in Support of his Motion to Temporarily File Under Seal. Kakar seeks to attach the Equity Purchase Agreement by and Among International Business Machines Corporation, Octo Equity Holdings Parent LLC, and Octo Platform Equity Holdings, LLC dated as of November 18, 2022 (the “EPA”) as Exhibit 1 to his Reply Memorandum in Support of his Motion to Dismiss Counts II and III of the Complaint (his “Reply Brief”) (ECF No. 17) filed by Knockout Holdings, LLC, f/k/a Octo Platform Equity Holdings, LLC (“Plaintiff”). There is no protective order entered in this case and Kakar does not believe the EPA would be properly designated as “confidential” under any protective order. Indeed, Kakar has a copy of the EPA, which he obtained through lawful means without being subjected to any confidentiality restrictions. However, out of an abundance of caution and based on Kakar’s belief that Plaintiff and International Business Machine Corporation (“IBM”) assert that the EPA is confidential, Kakar files this Motion to Temporarily File Under Seal Exhibit 1 to his Reply Brief until this Court can determine if its contents are and remain confidential.

### **LEGAL STANDARD**

The Court has the authority to direct that certain items in litigation be filed under seal. *U.S. v. Harris*, 890 F.3d 480, 492 (4th Cir. 2018) (citing *In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984)). In doing so, it must balance “the common law right to inspect and copy judicial records and documents” and the “right of access to court records” with “competing interests.” *Id.* (quoting *In re Knight Pub Co.*, 743 F.2d at 235). The public has a right to access documents filed in district courts under both the common law and the First Amendment. *East West, LLC v. Rahman*, No. 1:11cv1380, 2012 WL 3843657, at \*1 (E.D. Va. Sept. 4, 2012) (quoting *Va. Dep’t. of State Police v. Wash. Post*, 386 F.3d 567, 575 (4th Cir. 2004)). A party seeking to overcome “the presumption of access” must show “some significant interest that outweighs the presumption” of access. *Id.* (quoting *Va. Dep’t. of State Police*, 386 F.3d at 575 (other citations omitted)).

When assessing a request to seal a document, the Court: “must (1) give public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives.” *Id.* at \*2 (quoting *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 288 (4th Cir. 2000) (other citations omitted)). Pursuant to Local Rule 5(C), the moving party must also “provide: (1) a non-confidential description of what is to be sealed; (2) a statement as to why sealing is necessary, and why another procedure will not suffice; (3) references to governing case law; and (4) a statement as to the period of time the party seeks to have the matter maintained under seal and as to how the matter is to be handled upon unsealing.” *Id.* at \*2.

**ARGUMENT**

This Motion seeks to temporarily seal the EPA, which sets forth the final monetary and non-monetary terms by which IBM acquired Plaintiff's subsidiary, Octo Equity Holdings Parent, LLC ("Octo Parent"), for \$1.225 billion. Pursuant to Local Rule 5(C), Kakar is filing a Notice of Motion to Seal with his Motion to Seal to "give public notice of the request to seal and allow interested parties a reasonable opportunity to object." L.R. 5(C).

Kakar does not believe the EPA is confidential, because he has a copy of the EPA. Nor does Kakar believe that the EPA contains any confidential information, as it does not include any proprietary business information, technological developments, know how, trade secrets competitively sensitive financial, cost or sales information, or other similar information. Indeed, IBM publicly disclosed the consideration it paid to Plaintiff. ECF 12-7. However, Plaintiff has asserted that information related to the negotiations and execution of the EPA is confidential. In addition, IBM has refused to produce the EPA and other documents related to the negotiation and execution of the EPA without the entry of a protective order. Accordingly, Kakar makes this request out of an abundance of caution and to allow Plaintiff and IBM the opportunity to meet the requirements of Local Rule 5.

Accordingly, and for the reasons stated herein, Kakar respectfully requests that this Court grant the Motion and allow him to file Exhibit 1 to his Reply Brief under seal and to maintain Exhibit 1 to his Reply Brief under seal until further order of this Court.

September 1, 2023

Respectfully Submitted,

**ARVINDER KAKAR**

/s/ Charles M. Sims

Charles M. Sims (VSB No. 35845)

Rachael L. Loughlin (VSB No. 84133)

C. Quinn Adams (VSB No. 90506)

O'HAGAN MEYER, PLLC  
411 E. Franklin Street, Suite 500  
Richmond, VA 223219  
T: (804) 403-7111  
F: (804) 237-0250  
E-Mail: [CSims@ohaganmeyer.com](mailto:CSims@ohaganmeyer.com)  
E-Mail: [RLoughlin@ohaganmeyer.com](mailto:RLoughlin@ohaganmeyer.com)  
E-Mail: [CAadams@ohaganmeyer.com](mailto:CAadams@ohaganmeyer.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1<sup>st</sup> day of September, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to counsel of record.

In addition, I certify that I have sent the foregoing to IBM's counsel, via email and regular mail, addressed to:

Stacey Blaustein  
IBM Corporation  
1 North Castle Drive  
1A-73 MD NC-107  
Amonk, NY 10501  
Email: [blaustein@us.ibm.com](mailto:blaustein@us.ibm.com)

/s/ Charles M. Sims  
Charles M. Sims (VSB No. 35845)